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Attorney for Defendant ALLSTATE  
INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FOREMOST INSURANCE COMPANY  
GRAND RAPIDS, MICHIGAN,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY  
and DOES 1 through 10 inclusive,  
Defendants.

CASE NO.: 5:23-cv-2557 SSS (SHKx)

**STIPULATED PROTECTIVE  
ORDER; ~~PROPOSED~~ ORDER**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections of all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items

1 that are entitled to confidential treatment under the applicable legal principles. The  
2 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
3 Protective Order does not entitle them to file confidential information under seal; Civil  
4 Local Rule 79-5 sets forth the procedures that must be followed and the standards that  
5 will be applied when a party seeks permission from the court to file material under seal.  
6 The parties acknowledge if a party intends to file a dispositive motion, which requires  
7 filing documents which have been marked as confidential by the non-filing party, the  
8 parties agree to follow the procedure laid out under Local Rule 79-5.2.2 (b). This  
9 procedure requires the party seeking to seal confidential documents to prove to the  
10 Court prior to the filing of the dispositive motion that after meeting and conferring with  
11 the filing party there was no way to eliminate the need for filing under seal by means of  
12 redaction and that good cause or compelling reasons show why the strong presumption  
13 in favor of public access to civil cases should be overcome.

14  
15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve confidential and/or privileged information for  
17 which special protection from public disclosure and from use for any purpose other  
18 than prosecution of this action is warranted because this coverage lawsuit is pending  
19 while the underlying lawsuit giving rise to this case is also pending and because this  
20 coverage case may involve confidential and propriety materials of the parties, the  
21 insureds, and other third parties. Such confidential and proprietary materials consist of,  
22 but may not be limited to, confidential and privileged materials from the underlying  
23 lawsuit giving rise to this case, confidential business or financial information,  
24 information regarding confidential business practices, or other confidential research,  
25 development, commercial information, or trade secret information (including  
26 information implicating privacy rights of third parties), or which may be privileged or  
27 otherwise protected from disclosure under state or federal statutes, court rules, case  
28 decisions, or common law. Accordingly, to expedite the flow of information, to

1 facilitate the prompt resolution of disputes over confidentiality of discovery materials,  
2 to adequately protect information the parties are entitled to keep confidential, to ensure  
3 that the parties are permitted reasonable necessary uses of such material in preparation  
4 for and in the conduct of trial, to address their handling at the end of the litigation, and  
5 serve the ends of justice, a protective order for such information is justified in this matter.  
6 It is the intent of the parties that information will not be designated as confidential for  
7 tactical reasons and that nothing be so designated without a good faith belief that it has  
8 been maintained in a confidential, non-public manner, and there is good cause why it  
9 should not be part of the public record of this case.

10  
11 2. DEFINITIONS

12 2.1 Action: this pending federal law suit.

13 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
14 information or items under this Order.

15 2.3 "CONFIDENTIAL" Information or Items: information (regardless of  
16 how it is generated, stored or maintained) or tangible things that qualify for protection  
17 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
18 Statement.

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
20 support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or  
22 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

23 2.6 Disclosure or Discovery Material: all items or information, regardless of  
24 the medium or manner in which it is generated, stored, or maintained (including, among  
25 other things, testimony, transcripts, and tangible things), that are produced or generated  
26 in disclosures or responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter  
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as an

1 expert witness or as a consultant in this Action.

2 2.8 House Counsel: attorneys who are employees of a party to this Action.  
3 House Counsel does not include Outside Counsel of Record or any other outside counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association, or  
5 other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
7 this Action but are retained to represent or advise a party to this Action and have  
8 appeared in this Action on behalf of that party or are affiliated with a law firm which  
9 has appeared on behalf of that party, and includes support staff.

10 2.11 Party: any party to this Action, including all of its officers, directors,  
11 employees, consultants, retained experts, and Outside Counsel of Record (and their  
12 support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation support  
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
17 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
18 their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is  
20 designated as "CONFIDENTIAL."

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
22 from a Producing Party.

23  
24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected  
26 Material (as defined above), but also (1) any information copied or extracted from  
27 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
28 Material; and (3) any testimony, conversations, or presentations by Parties or their

1 Counsel that might reveal Protected Material.

2 Any use of Protected Material at trial shall be governed by the orders of the trial  
3 judge. The Parties agree that if this matter proceeds to trial, the use of any materials  
4 marked as confidential, and whether compelling reasons show that the confidential  
5 information should not be a part of the public record, will be decided by the trial judge.

6 This Order does not govern the use of Protected Material at trial.  
7

8 4. DURATION

9 After final disposition of this litigation, the confidentiality obligations imposed  
10 by this Order shall remain in effect until a Designating Party agrees otherwise in writing  
11 or a court order otherwise directs. Final disposition shall be deemed to be the later of  
12 (1) dismissal of all claims and defenses in this Action, with or without prejudice; and  
13 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,  
14 remands, trials, or reviews of this Action, including the time limits for filing any  
15 motions or applications for extension of time pursuant to applicable law.  
16

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

19 Each Party or Non-Party that designates information or items for protection under this  
20 Order must take care to limit any such designation to specific material that qualifies  
21 under the appropriate standards. The Designating Party must designate for protection  
22 only those parts of material, documents, items, or oral or written communications that  
23 qualify so that other portions of the material, documents, items, or communications for  
24 which protection is not warranted are not swept unjustifiably within the ambit of this  
25 Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
27 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
28 to unnecessarily encumber the case development process or to impose unnecessary

1 expenses and burdens on other parties) may expose the Designating Party to sanctions.

2 If it comes to a Designating Party's attention that information or items that it  
3 designated for protection do not qualify for protection, that Designating Party must  
4 promptly notify all other Parties that it is withdrawing the inapplicable designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
6 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated  
7 or ordered, Disclosure or Discovery Material that qualifies for protection under this  
8 Order must be clearly so designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic documents,  
11 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
12 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter  
13 "CONFIDENTIAL legend"), to each page that contains protected material. If only a  
14 portion or portions of the material on a page qualifies for protection, the Producing Party  
15 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
16 in the margins).

17 A Party or Non-Party that makes original documents available for inspection  
18 need not designate them for protection until after the inspecting Party has indicated  
19 which documents it would like copied and produced. During the inspection and before  
20 the designation, all of the material made available for inspection shall be deemed  
21 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants  
22 copied and produced, the Producing Party must determine which documents, or portions  
23 thereof, qualify for protection under this Order. Then, before producing the specified  
24 documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page  
25 that contains Protected Material. If only a portion or portions of the material on a page  
26 qualifies for protection, the Producing Party also must clearly identify the protected  
27 portion(s) (e.g., by making appropriate markings in the margins).

28 ///

1 (b) for testimony given in depositions that the Designating Party identify the  
2 Disclosure or Discovery Material on the record, before the close of the deposition all  
3 protected testimony.

4 (c) for information produced in some form other than documentary and for any  
5 other tangible items, that the Producing Party affix in a prominent place on the exterior  
6 of the container or containers in which the information is stored the legend  
7 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
8 protection, the Producing Party, to the extent practicable, shall identify the protected  
9 portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
11 failure to designate qualified information or items does not, standing alone, waive  
12 the Designating Party’s right to secure protection under this Order for such material.  
13 Upon timely correction of a designation, the Receiving Party must make reasonable  
14 efforts to assure that the material is treated in accordance with the provisions of this  
15 Order.

## 16 17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
19 designation of confidentiality at any time that is consistent with the Court’s Scheduling  
20 Order.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
22 resolution process under Local Rule 37.1 et seq.

23 6.3 The burden of persuasion in any such challenge proceeding shall be on the  
24 Designating Party. The Designating Party shall file a motion with the Court within thirty  
25 (30) days of the dispute resolution process beginning, if the parties cannot reach a  
26 satisfactory resolution, seeking a ruling from the Court designating the material in  
27 question confidential. If the Designating Party does not file their motion within thirty  
28 days of the dispute resolution process beginning, the Designating Party will be deemed

1 to have withdrawn the confidentiality designation, and the material in question will not  
2 be considered confidential. Unless the Designating Party has waived or withdrawn the  
3 confidentiality designation, all parties shall continue to afford the material in question  
4 the level of protection to which it is entitled under the Producing Party's designation  
5 until the Court rules on the challenge.

6  
7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
9 disclosed or produced by another Party or by a Non-Party in connection with this  
10 Action only for prosecuting, defending, or attempting to settle this Action. Such  
11 Protected Material may be disclosed only to the categories of persons and under the  
12 conditions described in this Order. When the Action has been terminated, a Receiving  
13 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a  
15 location and in a secure manner that ensures that access is limited to the persons  
16 authorized under this Order.

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
18 ordered by the court or permitted in writing by the Designating Party, a Receiving  
19 Party may disclose any information or item designated "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this Action, as well  
21 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
22 to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel) of the  
24 Receiving Party to whom disclosure is reasonably necessary for this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom  
26 disclosure is reasonably necessary for this Action and who have signed the  
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;

1 (e) court reporters and their staff;

2 (f) professional jury or trial consultants, mock jurors, and Professional  
3 Vendors to whom disclosure is reasonably necessary for this Action and who have  
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (g) the author or recipient of a document containing the information or a  
6 custodian or other person who otherwise possessed or knew the information;

7 (h) during their depositions, witnesses ,and attorneys for witnesses, in the  
8 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
9 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will  
10 not be permitted to keep any confidential information unless they sign the  
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed  
12 by the Designating Party or ordered by the court. Pages of transcribed deposition  
13 testimony or exhibits to depositions that reveal Protected Material may be separately  
14 bound by the court reporter and may not be disclosed to anyone except as permitted  
15 under this Stipulated Protective Order; and

16 (i) any mediator or settlement officer, and their supporting personnel,  
17 mutually agreed upon by any of the parties engaged in settlement discussions.

18  
19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
20 OTHER LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation that  
22 compels disclosure of any information or items designated in this Action as  
23 “CONFIDENTIAL,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such notification shall  
25 include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to  
27 issue in the other litigation that some or all of the material covered by the subpoena or  
28 order is subject to this Protective Order. Such notification shall include a copy of this

1 Stipulated Protective Order; and

2 (c) cooperate with respect to all reasonable procedures sought to be pursued  
3 by the Designating Party whose Protected Material may be affected.

4 If the Designating Party timely seeks a protective order, the Party served with the  
5 subpoena or court order shall not produce any information designated in this action as  
6 “CONFIDENTIAL” before a determination by the court from which the subpoena or  
7 order issued, unless the Party has obtained the Designating Party’s permission. The  
8 Designating Party shall bear the burden and expense of seeking protection in that court  
9 of its confidential material and nothing in these provisions should be construed as  
10 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive  
11 from another court.  
12

13 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
14 IN THIS LITIGATION

15 (a) The terms of this Order are applicable to information produced by a Non-  
16 Party in this Action and designated as “CONFIDENTIAL.” Such information produced  
17 by Non-Parties in connection with this litigation is protected by the remedies and relief  
18 provided by this Order. Nothing in these provisions should be construed as prohibiting  
19 a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to produce  
21 a Non-Party’s confidential information in its possession, and the Party is subject to an  
22 agreement with the Non-Party not to produce the Non-Party’s confidential information,  
23 then the Party shall:

24 (1) promptly notify in writing the Requesting Party and the Non-Party that  
25 some or all of the information requested is subject to a confidentiality agreement with  
26 a Non-Party;

27 (2) promptly provide the Non-Party with a copy of the Stipulated  
28 Protective Order in this Action, the relevant discovery request(s), and a reasonably

1 specific description of the information requested; and

2 (3) make the information requested available for inspection by the Non-  
3 Party, if requested.

4 (c) If the Non-Party fails to seek a protective order from this court within 14 days  
5 of receiving the notice and accompanying information, the Receiving Party may  
6 produce the Non-Party's confidential information responsive to the discovery request.  
7 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce  
8 any information in its possession or control that is subject to the confidentiality  
9 agreement with the Non-Party before a determination by the court. Absent a court order  
10 to the contrary, the Non-Party shall bear the burden and expense of seeking protection  
11 in this court of its Protected Material.

12  
13 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
15 Protected Material to any person or in any circumstance not authorized under this  
16 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
17 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
18 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
19 whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
20 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"  
21 that is attached hereto as Exhibit A.

22  
23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
24 PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain  
26 inadvertently produced material is subject to a claim of privilege or other protection,  
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without prior  
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
3 parties reach an agreement on the effect of disclosure of a communication or  
4 information covered by the attorney-client privilege or work product protection, the  
5 parties may incorporate their agreement in the stipulated protective order submitted to  
6 the court.

7  
8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
12 Protective Order no Party waives any right it otherwise would have to object to  
13 disclosing or producing any information or item on any ground not addressed in this  
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any  
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
18 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
19 Protected Material at issue. If a Party's request to file Protected Material under seal is  
20 denied by the court, then the Receiving Party may file the information in the public  
21 record unless otherwise instructed by the court.

22  
23 13. FINAL DISPOSITION

24 After the final disposition of this Action, as defined in paragraph 4, within 60  
25 days of a written request by the Designating Party, each Receiving Party must return all  
26 Protected Material to the Producing Party or destroy such material. As used in this  
27 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
28 summaries, and any other format reproducing or capturing any of the Protected Material.

Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: May 1, 2024

**BERGER KAHN, A Law Corporation**

By: /s/ Jamie L. Rice

David B. Ezra

Jamie L. Rice

Attorneys for Plaintiff Foremost  
Insurance Company

1 Dated: May 1, 2024

**SMITH SMITH & FEELEY LLP**

2  
3 By: /s/ Ha Eun Cho

4 John E. Feeley

5 Ha Eun Cho

6 Attorneys for Defendant Allstate  
7 Insurance Company

8 **Attestation**

9 Pursuant to L.R. 5-4.3.4(a)(2)(i), I attest that all other signatories listed and on  
10 whose behalf this filing is submitted, concur in the filing's content and have  
11 authorized the filing.

12 Date: May 1, 2024

13 By: /s/ Ha Eun Cho

14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15  
16 DATED May 6, 2024

17 

18 Shashi H. Kewalramani

19 United States Magistrate Judge  
20  
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
 that I have read in its entirety and understand the Stipulated Protective Order that was  
 issued by the United States District Court for the Central District of California on  
 \_\_\_\_\_ [date] in the case of *Foremost Insurance Company Grand Rapids, Michigan*  
*v. Allstate Insurance Company*, Case No.: 5:23-cv-2557 SSS (SHKx). I agree to  
 comply with and to be bound by all the terms of this Stipulated Protective Order and I  
 understand and acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
 manner any information or item that is subject to this Stipulated Protective Order to any  
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Central District of California for the purpose of enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceedings occur after termination of this  
 action. I hereby appoint \_\_\_\_\_ [print or  
 type full name] of \_\_\_\_\_ [print or type full  
 address and telephone number] as my California agent for service of process in  
 connection with this action or any proceedings related to enforcement of this Stipulated  
 Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_